

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  MCLEODUSA TELECOMMUNICATIONS, INC.,  Respondent.	DOCKET NO. FCU-03-1
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**ORDER DOCKETING FOR FORMAL PROCEEDING,  
DENYING MOTION TO DISMISS,  
AND REQUESTING STATUS REPORT**

(Issued January 8, 2004)

On January 3, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for a formal complaint proceeding to impose civil penalties pursuant to Iowa Code § 476.103, asking that the Board review the proposed resolution issued in C-02-381, relating to McLeodUSA Telecommunications, Inc. (McLeod), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which is a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On November 1, 2002, Mr. Lee Athearn filed a written complaint with the Board alleging that his local and long distance telephone service was changed to McLeod without his authorization. Board staff identified the matter as C-02-381 and, pursuant to Board rules, on November 6, 2002, forwarded the complaint to McLeod for response.

McLeod responded on December 18, 2002, stating that McLeod had converted Mr. Athearn's telephone service to Qwest on October 16, 2002, and that Mr. Athearn's account with McLeod was canceled and a full credit was issued.

On December 20, 2002, Board staff issued a proposed resolution describing these events and proposing that the credits offered by McLeod represented a fair resolution of the situation. No party other than the Consumer Advocate has challenged the staff's proposed resolution.

Consumer Advocate argues that with respect to the customer's local and long distance telephone service, McLeod violated Iowa Code § 476.103 by failing to obtain proper authorization before changing Mr. Athearn's service provider. Consumer Advocate suggests that the proposed resolution is not supported by the facts of the underlying complaint and cites five other complaint files that involve McLeod and slamming allegations.

On February 12, 2003, McLeod filed a response to Consumer Advocate's January 3, 2003, petition. In support of its response, McLeod asserted that it received oral authorization from Mr. Athearn to switch his local and long distance

telephone services to McLeod and submitted a copy of the recording as well as a transcript of the authorizing conversation. McLeod also responded to the five other allegations of slamming against McLeod which were cited by Consumer Advocate, stating that two of the complaints were regarding billing after downgrade, which is not a violation of Iowa Code § 476.103, one alleged slamming complaint was proven to be false, and two alleged slamming complaints were clerical errors and were not intentional slams as represented by Consumer Advocate.

Consumer Advocate filed a reply to McLeod's response and motion to dismiss on February 19, 2003, alleging that the telemarketing tactics used by McLeod were deceptive and vitiate any authorization that Mr. Athearn may have given for the change of service. Consumer Advocate also asserts that inadvertent violations of Iowa Code § 476.103, as claimed by McLeod, should be processed under § 476.103 and civil penalties should be assessed for every instance of slamming.

The Board has reviewed the record to date as well as the additional slamming complaints made against McLeod and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until January 30, 2004, and will request that the parties submit a report to the Board regarding the status of this matter on or before that date.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on January 3, 2003, identified as Docket No. FCU-03-1, is granted and docketed for formal proceeding.
2. The motion to dismiss the petition filed by McLeodUSA Telecommunications Services, Inc., on February 12, 2003, is denied.
3. The parties shall submit a status report to the Board on or before January 30, 2004, as described in this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 8<sup>th</sup> day of January, 2004.